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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

11 LEON S. SEGEN, derivatively on behalf of) CASE NO.: C 07-2917 MJJ
12 APPLIED MICRO CIRCUITS)
13 CORPORATION, INC.,)
14 Plaintiff)
15 v.)
16 DAVID M. RICKEY, WILLIAM E. BENDUSH,)
and APPLIED MICRO CIRCUITS)
17 CORPORATION,) DATE: November 27, 2007
Defendants.) TIME: 9:30 a.m.
18) COURTROOM: 11
19) JUDGE: Hon. Martin J. Jenkins
20) Action Filed: June 5, 2007
) Trial Date: Not Set
)
)

1 Nominal Defendant Applied Micro Circuits Corporation (“AMCC” or the “Company”)
 2 has filed a Motion to Dismiss plaintiff’s Complaint pursuant to Federal Rules of Civil Procedure
 3 8(a), 9(b) and 12(b)(6). In support of this motion, AMCC is hereby requesting, pursuant to Rule
 4 201 of the Federal Rules of Evidence, that the Court take judicial notice of certain exhibits that
 5 are attached to the accompanying declaration of Dale R. Bish (“Bish Declaration”), including
 6 excerpts from AMCC’s Form 10-K filed with the SEC on January 10, 2007 and the Company’s
 7 stock option plan both of which have been filed with the United States Securities and Exchange
 8 Commission (“SEC”).

9 When ruling on a motion to dismiss, the Court may take judicial notice of “matters of
 10 public record outside the pleadings.” *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th
 11 Cir. 1986), including documents that are required to be filed with the SEC. *See, e.g., In re*
 12 *Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999); *In re Portal Software, Inc.*
 13 *Sec. Litig.*, No. C-03-5138 VRM, 2005 WL 1910923, at *4 (N.D. Cal. Aug. 10, 2005) (taking
 14 judicial notice of SEC filings and press releases); *In re Copper Mountain Sec. Litig.*, 311 F.
 15 Supp. 2d 857, 863 (N.D. Cal. 2004) (judicial notice of documents filed with the SEC is proper)
 16 (citing *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276 (11th Cir. 1999)).

17 Moreover, because they are referenced in the Complaint (*see* Complaint ¶¶ 12, 19, 20),
 18 judicial notice of these documents is appropriate for this second, independent reason. *See Silicon*
 19 *Graphics*, 183 F.3d at 986; *In re Peerless Sys., Corp. Sec. Litig.*, 182 F. Supp. 2d 982, 987 (S.D.
 20 Cal. 2002) (“When ruling on a motion to dismiss, the court may consider the facts alleged in the
 21 complaint, documents attached to the complaint, documents relied upon but not attached to the
 22 complaint when authenticity is not contested, and matters of which the Court takes judicial
 23 notice.”) (citations omitted); *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991);
 24 *Cortec Indus., Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47-48 (2d Cir. 1991).

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1 Accordingly, AMCC respectfully requests that the Court grant its request for judicial
2 notice of the above-referenced documents attached as Exhibits A, B and C to the Bish
3 Declaration filed herewith.

|| Dated: August 28, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Douglas J. Clark
Douglas J. Clark

Attorneys for Nominal Defendant
Applied Micro Circuits Corporation